



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/913,320 | 10/09/2001 | Ernst Freydl | 5055 | 8497 |
| 7590 | 04/02/2004 | | EXAMINER | |
| Shoemaker & Mattare Crystal Plaza Building Suite 1203 2001 Jefferson Davis Highway PO Box 2286 Arlington, VA 22202-0286 | | | MANOHARAN, VIRGINIA | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1764 | |
| DATE MAILED: 04/02/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|--------------------|---------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/913,320 | FREYDL ET AL. |
| | Examiner | Art Unit |
| | Virginia Manoharan | 1764 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08/18/03.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 13-24 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 13-24 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____

4) Interview Summary (PTO-413) Paper No(s) _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

Claims 13 -24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a). Claims 14-20 appear to be at odd with the claim from which they depend directly or indirectly. Claims 13 recites that the “connection means comprising plural channels”, whereas, claim 20 for example, recites that the “..connection means comprise a sealing plate” which is inconsistent therewith. [A dependent claim incorporates every features of the claim from which it depends and cannot change or orient the limitation(s) already recited in the claim from which it depends]. It is noteworthy that pages 3-5 of the instant specification describe different embodiments, i.e., different connection means of the claimed invention.

b). The terms “preferably” in claim 24 and “in particular” in claims 19, 21, and 23-24 both fail ascertain the claimed invention with precision.

c). The inconsistent used of terminology in the claims is improper. For examples: “at least one filling opening” in claim 13, line 2 as opposed to “the filling openings “ in claims 13 & 15-16. See also the “at least one deepening” in claim 17 as opposed to the “the deepening” in claim 18.

d). Note typographical errors, e.g., “precessing” in claim 24 and “ compresses” in claim 19.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-16 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holland (3,847, 200) or Kowarski in view of Kuhn et al (5,569,357) or Mohan et al (5,888,830).

Holland or Kowarski discloses substantially the features of the apparatus and the method as claimed . See e.g., the claims at cols 9-12 of Kowarski. The apparatus and method of Holland or kowarski differ from the claimed invention in that claim 13, for example, recites “..connection means ..connectable to the filling openings of the sample vessels individually or in group whereby the sample vessels are hermetically connectable to means for producing a vacuum and thereby may be evacuated...”; and claim 24 recites “.. the filing openings of the sample vessels individually or in groups are gas-tightly connected to means for producing a vacuum, and..evacuated...”

However, Kuhn’s disclosure e.g., at col. 12, lines 40-64 of ‘...the vacuum system...depending on the embodiment ...factors ... can be applied individually, or in any combination, as selected by the user ...vacuum can be selectively activated and controlled to evaporate solution within a multiplicity of container...” would at least be suggestive of the communication of the filling opening of sample vessels with the means for producing a vacuum. Moreover, the means and method of connecting individually

the filling opening of vessels to a means for producing a vacuum is not an unobvious subject matter as suggested e.g. at col. 1 lines 39-40 of the Mohan et al reference.

To incorporate Kuhn or Mohan et al means and method to the apparatus and method of Kowarski or Holland would have been obvious to one of ordinary skill in the art at the time the invention was made, inasmuch as Kowarski, for example, suggests at col. 4, lines 8-16 and at col. 6, lines 12-15 of "... the upper body 13 is evacuated, it is sealed...the cover 36... is preferably secured to the top portion of the upper body 13... this permits selective control of the pressure levels applied to the upper body 13 to suit various characteristic of the liquid being evaporated." thereby suggesting the communication of the filling openings of sample vessels with the means of producing a vacuum.

Claims 17- 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is 571-271-1450. The examiner can normally be reached on Tuesday-Friday from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

V. Manoharan/af
March 4,2004


VIRGINIA MANOHRAN
PRIMARY EXAMINER
ART UNIT 1764
